

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

YELLOW CORPORATION, et al.,¹

Debtors.

Chapter 11

Case No. 23-11069 (CTG)

(Jointly Administered)

**OBJECTION OF A. DUIE PYLE, INC., TO NOTICE OF POTENTIAL ASSUMPTION
OR ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS OR LEASES
ASSOCIATED WITH THE NON-ROLLING STOCK ASSETS**

A. Duie Pyle, Inc. (“Landlord”) hereby objects (the “Objection”) to the *Notice of Potential Assumption or Assumption and Assignment of Certain Contracts or Leases Associated with the Non-rolling Stock Assets* [Docket No. 968] (the “Cure Notice”).

1. On August 6, 2023, Yellow Corporation and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “Debtors”), each commenced a case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware.

2. On September 15, 2023, the Court entered that certain that certain *Order (I)(A) Approving Bidding Procedures For the Sale or Sales of the Debtors’ Assets; (B) Scheduling Auctions and Approving the Form and Manner of Notice Thereof; (C) Approving Assumption and Assignment Procedures; (D) Scheduling Sale Hearings and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory*

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://dm.epiq11.com/YellowCorporation>. The location of Debtors’ principal place of business and the Debtors’ service address in these chapter 11 cases is: 11500 Outlook Street, Suite 400, Overland Park, Kansas 66211.

Contracts and Unexpired Leases; and (III) Granting Related Relief [Docket No. 575] (the “Bidding Procedures Order”)

3. On October 26, 2023, the Debtors filed the Cure Notice pursuant to the Bidding Procedures Order.

4. The Cure Notice identifies a real property lease in which Landlord is the counterparty—that certain Lease Agreement dated May 15, 2009, as amended by that certain First Amendment to Lease Agreement dated October 22, 2015 (as amended or modified from time to time, the “Lease”), covering certain premises located at 58-60 Page Place, Maspeth, NY (the “Premises”), on the terms and conditions set forth therein.

5. The Debtors are in default under the Lease due to their failure both to make certain rent payments and to perform maintenance and repairs at the Premises as required by the Lease. Specifically, Section 10 of Lease in pertinent part provides as follows:

Tenant at its cost shall maintain, and repair in a good and safe operating condition, all portions of the Leased Premises including, but not limited to, repair of the building structure, roof, yard, fence and underground utilities, windows, doors, dock doors, dock levelers, entrances and vestibules, and all electrical, mechanical, HVAC, plumbing and other fixtures and systems within the Leased Premises, including the sprinkler system servicing the Leased Premises.

6. The Debtors owe unpaid pre-petition rent under the Lease in the amount of \$90,727. Based on the information currently available to Landlord, the maintenance and repairs required to be made at the Premises, including without limitation maintenance and repairs required for the roof, will cost in excess of \$1,000,000. Accordingly the cure amount for the Lease is in excess of \$1,090,727 (the “Cure Amount”).

OBJECTION

I. The Cure Amount Must Be Paid In Full.

7. Before assuming and assigning an unexpired executory contract, a debtor must (a) cure (or provide adequate assurance of a prompt cure of) any defaults under the subject contracts, and (b) provide adequate assurance of future performance under the contract. *See* 11 U.S.C. § 365(b)(1). Absent the foregoing, a debtor may not assume an executory contract or unexpired lease. A cure under section 365 of the Bankruptcy Code requires that all unpaid amounts due under the agreement to be assumed be paid. *See, e.g., In re Network Access Solutions Corp.*, 330 B.R. 67, 76 (Bankr. D. Del. 2005).

8. The Cure Amount represents amounts that are presently due. Absent confirmation that the Cure Amount will be paid in full, the Debtors may not assume and assign the Lease.

II. The Landlord Must Receive Adequate Assurance Of Future Performance.

9. Section 365(b)(2) of the Bankruptcy Code requires a proposed assignee of a debtor to provide adequate assurance of future performance under the contract before the executory contract may be assumed and assigned. *See* 11 U.S.C. § 365(b)(2).

10. No one has provided Landlord with any adequate assurance of future performance under the Lease. Similarly, no assignee has been identified so Landlord has no information about any assignee. As a result, Landlord is unable to determine whether any assignee will comply with all of the requirements of section 365(b) of the Bankruptcy Code, including adequate assurance of future performance. Absent Landlord receiving adequate assurance of future performance, the Debtors may not assume and assign the Lease.

RESERVATION OF RIGHTS

11. Landlord reserves its rights to be heard regarding all assignment, cure, and adequate assurance of future performance issues and to submit supplemental objections to any proposed assumption and assignment of the Lease.

12. Furthermore, Landlord reserves the right to update, supplement, and revise the Cure Amount with respect to the Lease at any time before the assumption and assignment of the Lease to any potential assignee.

WHEREFORE, Landlord respectfully requests that any order of this Court approving assumption and assignment of the Lease be consistent with the foregoing, require the payment of the Cure Amount, and grant such further relief to Landlord as this Court deems just and equitable.

Dated: November 8, 2023

Respectfully submitted,

/s/ Jason W. Harbour

Jason W. Harbour (No. 4176)

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Counsel for A. Duie Pyle, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the on November 8, 2023, the foregoing *Objection of A. Duie Pyle, Inc. to Notice of Potential Assumption or Assumption and Assignment of Certain Contracts or Leases Associated with the Non-Rolling Stock Assets* (the “Objection”) was filed in the above-captioned case, thereby providing notice of the Objection to all parties that have filed an electronic appearance in this bankruptcy case.

I further certify a true and complete copy of the Objection was served by email on November 8, 2023 on the following:

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I further certify a true and complete copy of the Objection was served by overnight mail
on November 8, 2023 on the following:

Debtors

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Overland Park, Kansas 66211

/s/ Jason W. Harbour
Jason W. Harbour